No. 12225

United States
Court of Appeals
for the Ninth Circuit

UNITED STATES OF AMERICA,

Appellant,

vs.

YUNG POY, also known as PAUL YOUNG,

Appellee.

Transcript of Record

Appeal from the United States District Court for the Northern District of California, Southern Division

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

NAMES AND ADDRESSES OF ATTORNEYS

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* Page numbering appearing at foot of page of original certified Transcript of Record.

United States of America

No. 88041

PETITION FOR NATURALIZATION

[Of a Married Person, under Sec. 311, of the Nationality Act of 1940 (54 Stat. 1144-1145)]

To the Honorable the District Court of the United States at San Francisco, Calif. This petition for naturalization, hereby made and filed pursuant to Section 310(a) or (b), or Section 311 or 312, of the Nationality Act of 1940, respectfully shows:

1. My full, true, and correct name is Yung Poy, also known as Paul Young.

2. My present place of residence is 41 Wayne Place, San Francisco, Calif.

3. My occupation is Restaurant Proprietor.

4. I am 30 years old.

5. I was born on March 24, 1917, in Lung Hohn, China.

6. My personal description is as follows: Sex, male; color, yellow; complexion, sallow; color of eyes, brown; color of hair, black; height 5 feet, 8 inches; weight 135 pounds; visible distinctive marks, none; race, Chinese; present nationality, Chinese.

7. I am married; the name of my wife is Jennie Jung; we were married on February 1, 1942, at Reno, Nevada; she was born at Alviso, Santa Clara County, on December 24, 1919, and now resides with me. (Pet. amended Jan. 24, 1949, to show height of Petnr. as 5 ft., 8 in.

* * * *

8. I have two children; and the name, sex, date

and place of birth, and present place of residence of each of said children who is living, are as follows: Ann Elizabeth Young, female, San Francisco, Calif., June 30, 1942; Jean Elizabeth Young, female, June 21, 1945, San Francisco, Calif. Both reside with me.

9. My last place of foreign residence was Lung Hohn, Jung Shung, Kwangtung, China.

10. I emigrated to the United States from Hong Kong, China.

11. My lawful entry for permanent residence in the United States was at San Francisco, Calif., under the name of Yung Poy on July 3, 1926, on the S.S. "Pres. Taft" as shown by the certificate of my arrival attached to this petition.

12. Since my lawful entry for permanent residence I have not been absent from the United States, for a period or periods of 6 months or longer, as follows:

* * * *

18. I have resided continuously in the United States of America for the term of 2 years at least immediately preceding the date of this petition, to wit; since July 3, 1926.

19. I have not heretofore made petition for naturalization.

* * * *

21. Wherefore, I, your petitioner for naturalization, pray that I may be admitted a citizen of the United States of America, and that my name be changed to Paul Young.

22. I, aforesaid petitioner, do swear (affirm) that I know the contents of this petition for naturalization subscribed by me, that the same are true to the best

of my own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters I believe them to be true, and that this petition is signed by me with my full, true name; So Help Me God.

YUNG POY,

PAUL YOUNG.

Petitioner.

AR-3264578. [2]

Affidavit of Witnesses

The following witnesses, each being severally, duly, and respectively sworn, depose and say:

My name is Jennie Young, my occupation is housewife. I reside at 41 Wayne Place, San Francisco, Calif.

My name is Constance Carew, my occupation is housewife. I reside at 136 Jordan Ave., San Francisco, Calif.

I am a citizen of the United States of America; I have personally known and have been acquainted in the United States with Yung Poy, the petitioner named in the petition for naturalization of which this affidavit is a part, since February 1, 1946, to my personal knowledge the petitioner has resided, immediately preceding the date of filing this petition, in the United States continuously since the date last mentioned, and I have personal knowledge that the petitioner is now and during all such period has been a person of good moral character, attached to the

principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States, and in my opinion the petitioner is in every way qualified to be admitted a citizen of the United States.

I do swear (affirm) that the statements of fact I have made in this affidavit of this petition for naturalization subscribed by me are true to the best of my knowledge and belief; So Help Me God.

JENNIE YOUNG,
Witness.

CONSTANCE CAREW,
Witness.

Subscribed and sworn to before me by the above-named petitioner and witnesses, in the respective forms of oath shown in said petition and affidavit, in the office of the Clerk of said Court at San Francisco, Calif., this 17th day of February, Anno Domini 1948. I hereby certify that Certificate of Arrival No. 1300-K-15067 from the Immigration and Naturalization Service, showing the lawful entry for permanent residence of the petitioner above-named, has been by me filed with, attached to, and made a part of this petition on this date.

(Seal) C. W. CALBREATH,
Clerk.

By T. L. BALDWIN,
Deputy Clerk.

OATH OF ALLEGIANCE

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion; So Help Me God. In acknowledgment whereof I have hereunto affixed my signature.

YUNG POY,
PAUL YOUNG,
Petitioner.

Sworn to in open court, this 24th day of Jan., A.D. 1949.

C. W. CALBREATH,
Clerk.

By T. L. BALDWIN,
Deputy Clerk.

* * * *

Petition granted: Line No. ..... of List No. 2217 and Certificate No. 6933500 issued.

Name changed to Paul Young.

* * * *

Petition continued from List 2204 11-22-48 submitted Statement of Facts filed Nov. 22, '48, for U. S.

Petnrs. brief filed Dec. 31, 1948.

Jan. 14, 1949, filed order that petnr. be adm. upon taking the oath.

Mar. 21, '49, filed notice of appeal and affid. of service.

Mar. 24, '49, filed designation of contents of record on appeal.

Mar. 24, '49, filed stipulation for transmittal of original documents.

Mar. 24, '49, filed order for transmittal of original documents.

Apr. 7, 1949, filed Reporter's Transcript. [2-a]

United States Department of Justice
Immigration and Naturalization Service

No. 1300-K-15067

CERTIFICATE OF ARRIVAL

I Hereby Certify that the immigration records show that the alien named below arrived at the port, on the date, and in the manner shown, and was lawfully admitted to the United States of America as the minor son of a merchant under Section 3(6) of the Immigration Act of 1924.

Name: Yung Poy.

Port of entry: San Francisco, Calif.

Date: July 3, 1926.

Manner of arrival: SS President Taft.

I Further Certify that this certificate of arrival is issued under authority of, and in conformity with, the provisions of the Nationality Act of 1940 (54

Stat. 1137), solely for the use of the alien herein named and only for naturalization purposes.

In Witness Whereof, this Certificate of Arrival is issued October 28, 1947.

WATSON B. MILLER,
Commissioner.

(Filed Feb. 17, 1948.)

Form N-220. [3]

Form N-484.

U. S. Department of Justice
Immigration and Naturalization Service

Date: November 22nd, 1948. List No. 2204.

This list consists of Four sheets. Sheet No. 1.

NATURALIZATION PETITIONS
RECOMMENDED TO BE DENIED

To the Honorable the District Court of the United States, sitting at San Francisco, California. C. A. Antonioli, F. P. Boland, J. F. O'Shea, duly designated under the Nationality Act of 1940 (54 Stat. 1156) to conduct preliminary hearings upon petitions for naturalization to the above-named Court and to make findings and recommendations thereon, has personally examined under oath at a preliminary hearing the following Twenty-one (21) petitioners for naturalization and their required witnesses, has found for the reasons stated below, that such peti-

tions should not be granted, and therefore recommends that petitions be denied.

* * * *

Petition No.: 88041.

Name of Petitioner: Yung Poy.

Reason for Denial: (1) There was not filed with petition a valid certificate showing the date, place, and manner of petitioner's arrival in the United States, and petitioner has not established exemption from such requirement; and (2) the petitioner has failed to establish continuous legal residence in the United States for the period required by law.

* * * *

Respectfully submitted,

F. P. BOLAND,

(Signature of officer in attendance at final hearing.)

Date November 22, 1948.

[Endorsed]: Filed Nov. 22, 1948. C. W. Calbreath, Clerk. [4]

88041

YUNG POY (PAUL YOUNG)

QUESTION PRESENTED

Was the petitioner lawfully admitted to the United States for permanent residence within the meaning of the Nationality Act of 1940 as amended?

STATEMENT OF FACTS

The father of petitioner was lawfully admitted to the United States on February 6, 1917, as a merchant under Article II of the Treaty of 1880 with

China and the proclamations and statutes enacted to carry it into effect.

The petitioner, who is of Chinese race and nationality, was born in China on March 24, 1917, and on July 3, 1926, was admitted to the United States at San Francisco, California, as the son of a merchant. Thereafter the father ceased to be a merchant and on September 9, 1932, the petitioner was ordered deported to China on the ground that he had remained in the United States after failing to maintain the exempt status, under which he was admitted, of an alien entitled to enter the United States solely to carry on trade under and in pursuance to the provisions of the present existing treaty of commerce and labor. A writ of habeas corpus was obtained in the District Court at San Francisco and upon the hearing thereof, it was ordered that the petitioner be discharged from custody. An appeal was taken to the Circuit Court of Appeals, Ninth Circuit, and the order was affirmed. (Haff v. Yung Poy, 68 F 2d 203.)

On February 1, 1942, the petitioner married a native-born citizen of the United States and on February 17, 1948, filed the present petition for naturalization without a declaration of intention as the spouse of a citizen under the provisions of Section 311 of the Nationality Act of 1940.

Filed with the petition is a certificate of arrival qualified to show the petitioner's admission to the United States as the minor son of a merchant under Section 3(6) of the Immigration Act of 1924. [5]

AUTHORITIES AND ARGUMENT

The Nationality Act of 1940 requires a lawful entry for permanent residence as a prerequisite to admission to citizenship except in specifically stated cases.

Section 311 of the Nationality Act (8 U.S.C. 711), under which the instant petition was filed, reads as follows:

"A person who upon the effective date of this section is married to or thereafter marries a citizen of the United States, or whose spouse is naturalized after the effective date of this section, if such person shall have resided in the United States in marital union with the United States citizen spouse for at least one year immediately preceding the filing of the petition for naturalization, may be naturalized after the effective date of this section upon compliance with all requirements of the naturalization laws with the following exceptions:

(a) No declaration of intention shall be required.

(b) The petitioner shall have resided continuously in the United States for at least two years immediately preceding the filing of the petition in lieu of the five-year period of residence within the United States and the six months' period of residence within the State where the naturalization court is held. (8 U.S.C. 711)."

Section 329(b) of the Nationality Act of 1940 (8 U.S.C. 729) requires a lawful entry for permanent residence in connection with the filing of a declaration of intention. This section reads as follows:

"No declaration of intention shall be made by any person who arrived in the United States after June

29, 1906, until such person's lawful entry for permanent residence shall have been established, and a certificate showing the date, place, and manner of arrival in the United States shall have been issued. It shall be the duty of the Commissioner or a Deputy Commissioner to cause to be issued such certificate. (8 U.S.C. 729(b))."

Section 332(a) (Allegation 11) of the Nationality Act (8 U.S.C. 732) requires a recital of lawful admission for permanent residence in connection with the filing of a petition for naturalization, as follows:

"An applicant for naturalization shall, not less than two nor more than ten years after such declaration of intention has been made, make and file in the office of the clerk of a naturalization court, in duplicate, a sworn petition in writing, signed by the applicant in the applicant's own handwriting, if physically able to write, and duly verified by witnesses, which petition shall contain substantially the following averments by such applicant:

(11) My lawful entry for permanent residence in the United States was at (city or town), (state), under the name of ....., on (month, day, and year), on the (name [6] of vessel or other means of conveyance), as shown by the certificate of my arrival attached to this petition. (8 U.S.C. 732(a))."

Subdivision (c) of Section 332 requires that a certificate be filed with the petition, stating the facts of arrival.

Part 322 (Sec. 322) Title 8, Code of Federal Regulations (Cumulative Supplement) promulgated by the Commissioner of Immigration and Naturaliza-

tion with the approval of the Attorney General, under authority contained in Section 327 of the Nationality Act (8 U.S.C. 727), reiterates the requirement for lawful admission for permanent residence:

"A person, not a citizen of the United States in order to be eligible for naturalization upon a petition for naturalization to a naturalization court, shall, unless specially exempted as set forth in sub-chapter D (Nationality Regulations) of this title—

(b) Have been lawfully admitted to the United States for permanent residence."

It is settled that lawful entry for permanent residence cannot result from mere sojourn in the United States, no matter how protracted. (Kaplan v. Tod, 267 U.S. 228, 45 S.Ct. 257, 69 L.Ed. 585; Zartavian v. Billings, 204 U.S. 170, 27 S.Ct. 182, 51 L.Ed. 428; U.S. v. Parisi, 24 F. Supp. 414). Although "residence" or "domicile" may legally be established for many purposes, such as for divorce, charity, etc., by an alien admitted under the legal status of a temporary visitor, it is not sufficient for naturalization. (In re Weig, 30 F (2d) 418; U.S. v. Beda, 118 F (2d) 458; also as seamen, U.S. v. Kreticos, 40 F (2d) 1020; Fanfariotis v. U.S., 63 F (2d) 352; In re Jensen, 11 F (2d) 414; In re Olson, 18 F (2d) 425). It is equally well settled that an alien cannot meet the legal residence requirement, even if he is found to be not deportable. (Sadi v. U.S., 48 F (2d) 1040; Stapf v. Corsi, 287 U.S. 129, 53 S.Ct. 40, 77 L.Ed. 215.)

It follows that if the petitioner's entry is found to have been a qualified one, he cannot meet the terms of the Nationality Act. [7]

An entry after the effective date of the Immigra-

tion Act of 1924 by the minor son of a Chinese merchant, admitted prior to that act, does not constitute a lawful admission for permanent residence within the meaning of the Nationality Act.

Article II of the treaty between the United States and China concerning immigration of Chinese reads as follows:

"Chinese subjects, whether proceeding to the United States as teachers, students, merchants, or from curiosity, together with their body and household servants, and Chinese laborers who are now in the United States shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities, and exemptions which are accorded to the citizens and subjects of the most favored nation." (22 Stat. L. 826; concluded Nov. 17, 1880; ratification advised by the Senate May 5, 1881; ratified by the President May 9, 1881; ratifications exchanged July 19, 1881; proclaimed Oct. 5, 1881.)

The convention regulating Chinese immigration was concluded March 17, 1894, by which immigration of Chinese laborers was prohibited for ten years. By Article IV of that convention it was provided:

"In pursuant of Article III of the Immigration Treaty between the United States and China, signed at Peking on the 17th day of November, 1880, * * * it is hereby understood and agreed that Chinese laborers or Chinese of any other class, either permanently or temporarily residing in the United States, shall have for the protection of their persons and property all rights that are given by the laws of the United States to citizens of the most favored nation, except-

ing the right to become naturalized citizens. * * *."

By an amendment to "an act to execute certain treaty stipulations relating to Chinese," Congress, on November 3, 1893, defined the term "merchant" as follows:

"Sec. 2. * * * the term 'merchant', as employed herein and in the acts of this is amendatory, shall have the following meaning and none other:

'A merchant is a person engaged in buying and selling merchandise, at a fixed place of business, which business is conducted in his name, and who, during the time he claims to be engaged as a merchant does not engage in the performance of any manual labor, except such as is necessary in the conduct of his business as such merchant.' " (28 Stat. L. 7.)

In the Act of November 3, 1893, Congress also defined "Domiciled merchant" as follows:

"Where an application is made by a Chinaman for entrance into the United States on the ground that he was formerly engaged in this country as a merchant, he shall establish by the testimony of two creditable witnesses other than Chinese the fact that he conducted such business as hereinbefore defined for at least one year before his departure from the [8] United States, and that during such year he was not engaged in the performance of any manual labor, except such as was necessary in the conduct of his business as such merchant, and in default of such proof shall be refused landings." (28 Stat. L. 7.)

The Immigration Act of May 26, 1924, "to limit the immigration of aliens into the United States," defines its scope:

"Sec. 25. The provisions of this Act are in addi-

tion to and not in substitution for the provisions of the Immigration Laws, and shall be enforced as a part of such laws, and all the penal or other provisions of such laws, not inapplicable, shall apply to and be enforced in connection with the provisions of this Act. An alien, although admissible under the provisions of this Act, shall not be admitted to the United States if he is excluded by any provision of the Immigration Laws other than this Act, and an alien, although admissible under the provisions of the Immigration Laws other than this Act, shall not be admitted to the United States if he is excluded by any provision of this Act." (8 U.S.C. 223.)

The 1924 Immigration Act classifies all aliens entering the United States for permanent residence as "immigrants" and "non-quota-immigrants", excepting from such definition those entering temporarily or during a period requiring the maintenance of status. This latter group is commonly referred to as "non-immigrants". The Statute is in the following language:

"Sec. 3. When used in this Act the term 'immigrant' means any alien departing from any place outside the United States destined for the United States, except, (1) an accredited official of a foreign government, * * * and (6) an alien entitled to enter the United States solely to carry on trade between the United States and a foreign state of which he is a National under and in pursuance of the provisions of a treaty of commerce and navigation, and his wife, and his unmarried children under 21 years of age, if accompanying or following to join him * * *." (8 U.S.C. 203, as amended by the Act of July 6, 1932.)

Prior to the amendment of July 6, 1932, the sixth subdivision of section 3 read as follows:

"(6) An alien entitled to enter the United States solely to carry on trade under and in pursuance of the provisions of a present existing treaty of commerce and navigation."

"Immigrant" as above defined and "non-quota-immigrant" as defined in Section 4 of the Act of 1924 constitute the classes of aliens whose admission to the United States is authorized for lawful permanent residence under the 1924 Immigration Act. (8 U.S.C. 204.) Student "non-quota-immigrants" are taken out of the class of alien admitted for permanent residence by Section 15 of the Act (8 U.S.C. 215; 8 C.F.R. 125.5.) [9]

Section 13(c) of the Immigration Act of 1924 excluded as immigrants aliens ineligible to citizenship:

"No alien ineligible to citizenship shall be admitted to the United States unless such alien (1) is admissible as a nonquota immigrant under the provisions of subdivision (b), (d), or (e) of Section 4, or (2) is the wife, of the unmarried child under 18 years of age, of an immigrant admissible under such subdivision (d), and is accompanying or following to join him, or (3) is not an immigrant as defined in Section 3. * * *"

Section 15 of the Immigration Act of 1924 requires maintenance of the exempt status of aliens admitted to the United States who are excepted from the status of immigrants and quota immigrants:

"The admission to the United States of an alien excepted from the class of immigrants by clause 1, 2, 3, 4, 5, or 6 of Section 3 * * * shall be for such

time, and under such conditions as may be by regulations prescribed * * * to insure, that at the expiration of such time or upon failure to maintain the status under which admitted, he will depart from the United States * * *." (8 U.S.C. 215.)

The terms "status" and "trader's status" as used in the Immigration Act of 1924 are defined in regulations promulgated by the Commissioner of Immigration and Naturalization with the approval of the Attorney General in 8 C.F.R. 110.27, authorized by Section 24 of the Immigration Act (8 U.S.C. 224). Section 110.29(a), (b) and (c) of Title 8 C.F.R. requires the maintenance of status by certain-non-immigrants, including an alien who has been admitted as the unmarried minor child of a treaty trader.

Rule 18, paragraph 5, of the Chinese Rules of October 1, 1926, promulgated by the Commissioner of Immigration, with the approval of the then Secretary of Labor, under authority contained in Section 24 of the Immigration Act of 1924, provided as follows:

"Par. 5. Aliens who have been admitted as non-immigrants * * * under Section 3 * * * of the Immigration Act of 1924 * * *, and aliens admitted under Section 3(6) of said Act as non-immigrants (together with their alien wives and minor children admitted at the time or subsequently) who shall fail or refuse to maintain the status under which admitted, or to depart voluntarily when they have ceased to maintain such status; shall be taken into custody upon warrant of the Secretary of Labor and deported in the manner provided by Section 14 of the Immigration Act of May 26, 1924." [10]

Provision is made in Section 14 of the Act (8 U.S.C. 214) for the deportation of any alien who is found to have remained longer than permitted under the Act or regulations made thereunder.

At the time of his entry, the petitioner was of a race ineligible to citizenship and therefore was excludable if applying for admission as an immigrant. An examination of the facts indicates that the only section applicable to him was Section 3(6) and entry under this section was an entry for a limited purpose. It was contended at one time that this Act excluded the wives and children of treaty merchants where the merchant had entered prior to the Act of 1924 and the family sought admission subsequently, but the Supreme Court in Cheung Sum Shee v. Nagle, 268 U.S. 336, 45 S.Ct. 539, 69 L.Ed. 985, ruled otherwise. However, the Court clearly indicated that persons falling within petitioner's class came within the terms of the Act, stating: "An alien entitled to enter the United States 'solely to carry on trade' under an existing treaty of commerce and navigation is not an immigrant within the meaning of the Act, Section 3(6), and therefore is not absolutely excluded by Section 13. Further, "In a very definite sense they are specified by the Act itself as non-immigrants."

An entry under Section 3(6) of the Act of 1924 is definitely not an entry for permanent residence. It was held in the case of Yim v. U.S., (C.C.A. 8 1935), 78 F (2d) 43, that treaty merchants admitted to the United States after June 30, 1924, are not classed as permanent residents and may be deported for failing to maintain status. Similarly, it was held that the family of a merchant could be deported if admitted

on the basis of its relationship and the merchant status had terminated. Koga v. Berkshire, (C.C.A. 9-1935), 75 F (2d) 820. It can be seen, therefore, that an entry under this section is limited in its purpose and hence could not be made the basis for a petition for naturalization.

It is true that the language used by the Court in ruling on the appeal in the habeas corpus case involving petitioner is very broad but it [11] should be born in mind that the sole issue before the Court was whether or not petitioner was deportable because the father had failed to maintain status. It was conceded that the father, entering at the time he did, was not required to maintain his status and the Court held that the rights of the son were co-extensive with the father insofar as deportation was concerned. This is a far different ruling than a holding that petitioner's entry was a lawful entry for permanent residence within the meaning of the Nationality Act. Further, since the ruling of the Court in that case, Congress has enacted the following legislation:

"Be it enacted by the Senate and House and Representatives of the United States of America in Congress assembled, That section 10 of the Act of May 26, 1924, (43 Stat. 158; U.S.C., title 8, sec. 210(a)-210(f), is amended by adding a new subsection thereto to be known as subsection (g) and to read as follows:

" '(g) An alien lawfully admitted to the United States, pursuant to clause 6, section 3, of this Act, between July 1, 1924, and July 5, 1932, both dates inclusive, who since entry has maintained the status required of him at the time of his admission and who desires to visit abroad and return to the United

States to resume the status existing at time of his departure for such visit, may apply to the Commissioner of Immigration and Naturalization for a Treaty-Merchants Return Permit which may be issued by the Commissioner, with the approval of the Attorney General, if he finds that the applicant is entitled thereto. Such a permit shall, in the possession of persons to whom issued, be accepted in lieu of any visa otherwise required from non-immigrants under this Act or section 30 of the Alien Registration Act of 1940 (54 Stat. 673; 8 U.S.C. 451). Each permit shall be valid for a period therein designated not exceeding one year, but may be extended for good cause shown to the satisfaction of the Commissioner of Immigration and Naturalization, for a period or periods not exceeding six months each. For the issuance of any such permit or any extension thereof there shall be paid to the Commissioner of Immigration and Naturalization a fee of $3, which shall be covered into the Treasury as miscellaneous receipts. The necessary forms and other requirements to effect the purposes of this subsection shall be prescribed by regulations of the Commissioner of Immigration and Naturalization, with the approval of the Attorney General. Subsection (e) shall be applicable to this subsection.' " Signed by President on June 3, 1948.

It will be noted that this section does not make any distinction between persons whose parents entered prior to the act or subsequent thereto. It procides simply for the issuance of a return permit to those persons who entered under section 3(6) after 1924. It would seem that if there were a [12] sepa-

rate class of persons whose parents entered prior to the Act, the section would have provided for them. The language of the Act of 1924 as interperted by the Courts is broad enough to cover the facts in this case and there appears to be no reason for going outside it to set up a separate and distinct class which would have privileges not accorded to others.

The repeal of the Chinese Exclusion Acts did not contemplate that all Chinese in this country under a mercantile status would become eligible for naturalization.

In repealing the Chinese Exclusion Acts and making the Chinese racially eligible for naturalization, the Congressional Committees contemplated that such legislation would place those few Chinese that were to be permitted entry on a parity with other racial groups, but not that the legislation would, in any way, change the existing immigration status of Chinese aliens in this country so as to enable greater numbers to meet the requirements for naturalization. In fact, the language of the Senate Committee clearly demonstrates the Committee understood that the greater number of Chinese in this country are ineligible to naturalize because they have not been admitted for lawful permanent residence, which is a condition precedent to naturalization. Their understanding is expressed in the following language:

"The number of Chinese who will actually be made eligible for naturalization under this Section is negligible. There are approximately 42,000 alien Chinese persons in the United States (37,242 in continental United States and 4,844 in Hawaii, according to the census figures of 1940). However, a large number of

these Chinese have never been admitted to the United States for lawful permanent residence, which is a condition precedent to naturalization and, therefore, many of this number would not be eligible for naturalization, not because of racial disability, but because they cannot meet existing statutory requirements of law. The number of Chinese who will be made eligible in the future, in addition to those already here, will of necessity be very small because the quota for China is limited to 105 per annum, as provided in section 2 of this bill." (Chinese Exclusion Repeal Act of Dec. 17, 1943 (57 Stat. 600; Sec. 303)).

The last sentence of the above-quoted paragraph clearly shows that "lawful permanent residence which is a condition precedent to naturalization" [13] means admission to the United States as an "immigrant". Section 2 of the Act of December 17, 1943, provides that with the exception of certain nonquota immigrants under the 1924 Act, all Chinese persons entering the United States annually as immigrants shall be allocated to the quota for Chinese computed under the provisions of Section II of said Act; and that preference up to 75 per centum of the quota shall be given to Chinese born and resident in China. The remaining 25 per centum would be available for Chinese in other countries or temporarily in the United States who are in a position to apply for preexamination or other benefits of the immigration laws incident to admission for lawful permanent residence in the United States as immigrants. As only 25 per cent of the quota of 105 is available to

Chinese who come from countries other than China or who are already in the United States, it follows that only very few of those already here can be naturalized and as all who proceed toward naturalization must have a lawful entry for permanent residence, "the number who will actually be made eligible for naturalization under this section is negligible".

In addition to Chinese admissible under the quota of 105 per annum, the following Chinese persons are regarded as lawfully admitted for permanent residence for all purposes, including naturalization, if regularly admitted and belonging to one of the following classes:

1. Aliens readmitted between July 1, 1924, and December 16, 1943, inclusive, as returning Chinese laborers who acquired lawful permanent residence prior to July 1, 1924.

2. Persons admitted between July 1, 1924, and June 6, 1927, inclusive, as United States citizens under Section 1993 of the United States Revised Statutes, such admission having been in error for the reason that their fathers had not resided in the United States prior to their birth.

3. Nonquota immigrants admitted at any time after June 30, 1924, as lawfully admitted aliens returning from a temporary visit abroad, or as ministers or professors, and their families.

4. Nonquota immigrant wives admitted between June 13, 1930, and December 16, 1943, inclusive. [14]

5. Nonquota immigrants admitted on or after

December 17, 1943, who were formerly citizens of the United States and lost citizenship by marriage.

Since these latter classes are eligible for naturalization in addition to the 105 admissible per annum under the quota, the legislators would hardly refer to the "number who will be made eligible for naturalization" as "negligible" if they meant to include in addition to these groups all Chinese treaty merchants and their families. Comparatively few of the latter class would be naturalized since they would necessarily be allocated to the 25 per centum of the quota under which they could obtain lawful admission for permanent residence.

From a careful study of the legislative history of the Act of December 17, 1943, it will be noted that in repealing the Chinese exclusion laws it was not the purpose of the legislators to open wide the doors to Chinese immigrants. The following is quoted from page 3 of Senate Report No. 535 with regard to Section 1:

"The purpose of this section is to repeal all of the laws enacted between 1882 and 1913, dealing with the exclusion and deportation of Chinese persons. It should be stated at this point that no substantial gain accrues to the Chinese people through the repeal of these laws from a standpoint of permitting Chinese to enter the country who are at present denied that privilege because other provisions of laws subsequently enacted effectively keep out persons of the Chinese race as well as persons of other races ineligible to citizenship. It does, however, eliminate the undesirable laws specifically designating Chinese as

a race to be excluded from admission to the United States."

President Roosevelt, in his message to Congress (p. 3, Sen. Rep. 535), on October 11, 1943, regarding the 1943 Act, states: "By the repeal of the Chinese exclusion laws, we can correct a historic mistake and silence the distorted Japanese propaganda. The enactment of legislation now pending before the Congress would put Chinese immigrants on a parity with those from other countries. The Chinese quota, would, therefore, be only about 100 immigrants a year. There can be no reasonable apprehension that any such number of immigrants will cause unemployment or provide competition [15] in the search for jobs. The extension of the privileges of citizenship to the relatively few Chinese residents in our country would operate as another meaningful display of friendship." (P. 3 Senate Rep. 535.)

Senate Report No. 535 states explicitly that admission for lawful permanent residence in accordance with existing statutory requirements is a condition precedent to naturalization. "Admission for lawful permanent residence" as used in the Immigration and Naturalization statutes means admission in compliance with the immigration laws as an immigrant to reside here permanently and without restriction upon such residence. By making the Chinese eligible for admission into the United States under a quota and for citizenship, it certainly was not intended that all treaty merchants would have the privileges granted to aliens generally.

Conclusion

The entry of the petitioner was made after the enactment of the Immigration Act of 1924 and therefore such entry was necessarily limited by that act. The Nationality Act of 1940 requires a lawful admission for permanent residence. This the petitioner does not have. Since his residence is a qualified one, he is not eligible for naturalization.

/s/ F. P. BOLAND,
Designated Naturalization Examiner.

[Endorsed]: Filed Nov. 22, 1948. C. W. Calbreath, Clerk. [16]

In the Southern Division of the United States District Court for the Northern District of California

Petition No. 245-P-88041

In the Matter of the Petition of YUNG POY, also known as PAUL YOUNG, for Naturalization.

PETITIONER'S BRIEF

Question Presented

Was the petitioner lawfully admitted to the United States for permanent residence at the time of his entry on June 2nd, 1926, at San Francisco, California.

Statement of Facts

Yung Poy, the petitioner' who is of Chinese race and nationality, was born in China on March 24, 1917; he was lawfully admitted to the United as a minor son of a resident Chinese merchant, on

June 2nd, 1926, (under Provision of Article 2, Treaty of November 17th, 1880, between the United States and China), at San Francisco, California.

Yung Poy's father was lawfully admitted to the United States on February 6th, 1917, as a merchant, under Article II of the Treaty of 1880 with China. At the time of petitioner's admission into the United States, his father was lawfully domiciled here, and engaged as a merchant at San Jose, California. In 1927, the father ceased to be a merchant, and obtained employment [17] as a janitor, the mercantile institution with which the father had been associated, went out of business.

The petitioner is married to a native-born citizen of the United States, and has filed his petition for citizenship under Section 311 of the Nationality Act of 1940, which provides that the petitioner prove two years of permanent residence in the United States prior to the filing of his petition.

Argument

Much, if not all of the questions presented for decision by this Court have been previously decided in the case of Haff vs. Yung Poy, 68 F (2d) 203, C.C.A. 9th Cir. 1933). The petitioner for naturalization in this case, is identical with and is the same Yung Poy who was the appellee in the case above-referred to.

Deportation proceedings were instituted against the minor son, on the grounds that one admitted to the United States under the Immigration Act of 1924, as a minor son of a trader, became subject to deportation if the father ceased to carry on trade.

The Court, after reviewing the decisions, including Cheung Sum Shee v. Nagle, (268 U.S. 336, 45 S.Ct. 539), and U.S. v. Mrs. Gue Lim, (176 U.S. 459, 20 S.Ct. 415), states on page 204,

"In view of these decisions, we are of the opinion that appellees' rights to remain in the United States is measured by the Treaty and not by the Immigration Act of 1924, even though he came here after the passage of that Act."

Then the Court considers the question as to whether the change in the father's status require that the son be deported: The Court held that the minor son's right to remain in the United States was governed by the Treaty of 1880, and not by the Act of 1924, and that no limitation or restriction upon the alien's stay in the United States is contained in the treaty. At pages 204-205 the Court further states: [18]

"—In support of its claimed right to deport appellee because he has lost his communicated status as the son of a merchant, the Government relies upon Section 15 of the Act of 1924 (8 U.S.C.A.-215), and the departmental rules promulgated thereon. Said Section 15 provides, in part, that, upon failure to maintain the status under which admitted, the alien will depart. But, as we have seen, appellee's right to remain in the United States is governed by the treaty and not by the act, and no limitation or restriction upon the alien's stay in the United States is contained in the treaty. On the contrary, it is well settled that a Chinese merchant, lawfully admitted prior to the act of 1924, may remain here after he has lost his status as a merchant (see Lo Hop v. U.S., (C.C.A. 6), 257 F. 489, and Wong Sun Fay v. U.S., (C.C.A.

9), 13 F. (2d) 67); and the government therefore concedes that appellee's father is not now deportable. The right of such a merchant's wife or minor child to remain here after loss of his or her communicated status, by reason of the merchant's changed occupation, is, of course, another question; but that such an alien's right is coextensive with the right of the husband, or father, seems a just and reasonable answer, for the absurdities and hardships of a contrary rule of law are apparent. Thus, if a merchant, because of illness, mishap, economic condition, or other misfortune, were required to change his status as a merchant and secure other employment, should his hapless—and perhaps helpless—family be deported and he allowed to remain, or perforce required to remain because of long absence from his native country and environment? Likewise, must the family of such a merchant be deported because, upon the death of the merchant, the communicated status of the wife and children has been lost?

"With these harsh consequences in mind, and in view of the well-settled rule of law 'that statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or an absurd conclusion' (Lau Ow Bew v. United States, 144 U.S. 47, 59, 12 S.Ct. 517, 520, 36 L.Ed. 340) we cannot conclude that the rights of such aliens to remain here should be construed so narrowly as the government contends, or that it was the intention of Congress in enacting the Immigration Act of 1924 that aliens admitted to the United States by virtue of the 'merchant status' of their prior domiciled father or husband, as the

case might be, should be deported because the merchant, although not subject to deportation, has lost his status as a merchant."

In line with the Court's reasoning, as [19] above set forth, that the appellees' rights are coextensive with the right of his father, his entry should certainly be considered one for permanent residence under the Nationality Act of 1940 as Amended. It would be conceded by the Government that the father's entry prior to 1924 as a Chinese merchant would be considered a lawful admission for permanent residence. A Certificate of Arrival would therefor issue.

In effect, the Government in its Brief has contended that the petition should be denied because petitioner did not enter the United States for permanent residence, and consequently the Certificate of Arrival that is attached to the Petition is not valid. If, however, the petitioner lawfully entered the United States for permanent residence, as has been previously decided, then the Certificate of Arrival attached to his Petition is valid and sufficient, and his residence since his arrival in the United States is a legal one.

It is interesting to analyze the Government's Brief in support of its position. On page 3 it recites many cases, but not one of the cases cited is a Chinese case, and all can be distinguished on their facts from the case under discussion; they are mainly concerned with cases where people are illegally here to start with, or cases where parties entered as visitors and overstayed their leave, or cases where in passports or visas were obtained in another party's name and

consequently constituted illegal entry, perpetrated through fraud. It is significant to note however, that no case is cited wherein the person involved is of the Chinese race, nor where the Treaty with China, November 17th, 1880, is brought into question.

In the case of Wong Choon Hoi, 246-P-126123, decided by United States District Judge Wm. C. Mathes, the facts were similar to the facts contained in this case. The Court held:

"I am unable to perceive any sound basis for the [20] Commissioner's opposition. Precedent of long standing holds that where, as in the proceeding at bar, a Chinese merchant was admitted to this country prior to 1924 pursuant to the Treaty of 1880, members of his family (wife and unmarried minor children) coming after 1924 are entitled to be admitted for permanent residence by virtue of the Treaty. (Cheung Sum Shee v. Nagle, 268 U.S. 336 (1925); Haff v. Yung Poy, 68 F. (2d) 203 (C.C.A. 9th, 1933.)

These decisions are to be respected as determining the character of residence for which petitioner was admitted. The fact that Chinese persons were ineligible for naturalization until the 1943 amendment cannot affect the character of that residence. (Petition of Chi Yan Cham Louie, No. 39,067, W.D. Wash., unreported decision of Judge Black, August 29, 1946.)

Long before the Nationality Act of 1940, Chinese merchants admitted to engage in business here pursuant to the Treaty of 1880 were referred to as "domiciled" in this country. (Cheung Sum Shee v. Nagle, supra, 268 U.S. at p. 334; United States v. Mrs. Gue Lim, 176 U.S. 459 (1900); Lau Ow Bew v. United

States, 144 U.S. 47 (1892); Wong Yow v. Weedin, 33 F. (2d) 377 (C.C.A. 9th, 1929); Woo Hoo v. White, 243 Fed. 541 (C.C.A. 9th, 1917.)

The term "residence", as used in the naturalization statutes, is practically synonymous with "domicile". (Petition of Wright, 42 F. Supp. 306, 307 (E. D. Mich., 1941); United States v. Parisi, 24 F. Supp. 414, 419 (D.C. Md. 1938); Petition of Oganesoff, 20 F. (2d) 978, 980 (S.D. Cal. 1927); United States v. Shanahan, 232 Fed. 169, 172 (E.D. Pa. 1916).

Being a minor when he entered this country, petitioner acquired at that time the domicile of his father. There has been no suggestion of any act or expression of intent indicating change of domicile either before or after petitioner became emancipated upon attaining majority.

Indeed, all the facts in evidence are to the contrary. Petitioner has been present and engaged in business in this country for twelve years and more since his admission for permanent residence. During the past five years he has been married to a citizen of the United States by birth, and is now the father of three children born in this country.

Accordingly it must be held that petitioner has more than met the three-year residence requirement of Sec. 310(b) of the Nationality Act of 1940. The petition of Wong Choon Hoi is granted." [21]

The above case reported in D.C. Cal., 1947-71-F. Supp. 160. Decision rendered in case on February 17, 1947.

The Government in its Brief, on page 8, states that the Congress has enacted legislation, which provides in effect that under certain conditions Treaty-

Merchants Return Permits may be issued. What particular relative pertinency this bears to the case under discussion, escapes counsel. The Government itself admits that the petitioner cannot be deported.

It was conceded that the father, entering at the time he did, was not required to maintain his status and the Court held that the rights of the son were co-extensive with the father insofar as deportation was concerned.

All the legislation referred to on page 8 stated that in the event the Treaty-Merchant wishes to leave the United States, he could secure a Permit to return to the United States. Inasmuch as it has been judicially determined that this petitioner does not have to maintain status, and is here permanently, and was admitted under the Treaty with China December 7th, 1880, this particular legislation does not apply to this case in any respect.

Government argues that the Congressional Committees who were considering repeal of the Chinese Exclusion Acts, understood that the greater number of Chinese in this country are ineligible for naturalization because they have not been admitted for lawful permanent residence; even conceding that this was the intent of the Committee, it would not apply to the instant case, inasmuch as petitioner was admitted for permanent residence and in addition to this it should be conceded that the real reason a great many Chinese in this country have not and will not apply for naturalization is, that they would not be able to satisfy the requirements of the law, that they be able to speak and understand English.

It is interesting to note that in Report No. 535, of

the Senate Committee of the 78th Congress, 1st Session, Calendar No. 543, that the Committee states that it had for its consideration, letters from Francis Biddle, Attorney General, and from the President of the United States Franklin D. Roosevelt. Nowhere in the letter to the Senate Committee, either from the Attorney General or from the President of the United States, is there any indication or any intent shown to limit the benefits of the repeal of the Exclusion Act to just a few of the Chinese residents in this country, but on the contrary the spirit and intent would be to extend the benefits as widely as possible among the 45,000 Chinese alien residents of this country.

Below is a copy of the letter submitted by the Attorney General in respects to a request by the Senate Committee considering the repeal of the Chinese Exclusion Act, and also a copy of the President's Message to Congress of the United States, which is contained in the Senate Committee Report:

"Hon. Richard B. Russell
"Chairman, Committee on Immigration
"United States Senate, Washington, D. C.

"My dear Senator:

"This acknowledges your letter of Oct. 1, 1943, requesting my views relative to a bill (S.1404) to repeal the Chinese Exclusion Laws, to establish quotas and to make Chinese residents of the United States eligible for naturalization. The measure would repeal all existing statutory provisions excluding persons of the Chinese race from entry into the

United States (Sec. 1). It would apply the immigration quota provisions to Chinese and would allocate all Chinese persons entering the United States as immigrants to the quota for China (Sec. 2). The existing naturalization laws, which are limited to white persons, persons of African nativity or descent, and descendants of races indigenous to the Western hemisphere would be extended so as to include Chinese persons and persons of Chinese descent (Sec. 3).

"The Chinese Exclusion Laws were enacted during a period when immigration to this country was not restricted by any quota provisions, the quota limitations having been first introduced into the laws by the Immigration Act of 1924. The quota restrictions are a sufficient protection to this [23] country against excessive immigration, generally, and against the possibility of an unreasonable number of immigrants from any one country. No useful purpose is being served by retaining the Chinese Exclusion Laws in effect, since under quota provisions the Chinese quota would be only 105 persons annually.

"The heroism of the Chinese people has won the respect and admiration of the United Nations. A repeal by the Congress of our antiquated exclusion laws can be an expression of our gratitude and a symbol of our esteem.

"Similarly we should extend to Chinese residents in this country the same eligibility for citizenship that is now given people of other nations. While only approximately 45,000 Chinese residents who are in the United States would benefit directly by such

action, the goodwill created would extend to the millions in China who are fighting at our side.

"Accordingly I recommend the enactment of the bill.

"Sincerely yours,

"FRANCIS BIDDLE,
"Attorney General."

"PRESIDENT'S MESSAGE TO CONGRESS

"To The Congress of the United States:

"There is now pending before the Congress, legislation to permit the immigration of Chinese people into this country and to allow Chinese residents here to become American citizens. I regard this legislation as important in the cause of winning the war and of establishing a secure peace.

"China is our ally. For many long years she stood alone in the fight against aggression. Today we fight at her side. She has continued her gallant struggle against very great odds. China has understood that the strategy of victory in this World War first required the concentration of the greater part of our strength upon the European front. She has understood that the amount of supplies we could make available to her has been limited by difficulties of transportation. She knows that substantial aid will be forthcoming as soon as possible, and not only in the form of weapons and supplies, but also in carrying out plans already made for offensive effective action. We and our allies will aim our forces at the heart of Japan—in ever increasing strength, until the common enemy is driven from China's soil.

"But China's resistance does not depend alone on guns and planes and on attacks on land, on the sea, and from the air. It is based as much in the spirit of her people and her faith in the allies. We owe it to the Chinese to strengthen that faith. One step in this direction is to wipe from the Statute books those anachronisms in our law which forbid the immigration of the Chinese people into this country, and which bar Chinese residents from American citizenship.

"Nations, like individuals, make mistakes. We must be big enough to acknowledge our mistakes of the past and to correct them.

"By the repeal of the Chinese Exclusion Laws, we can correct a historic mistake and silence the distorted Japanese propaganda.

"The enactment of legislation now pending before the Congress would put Chinese immigrants on a parity with those from other countries. The Chinese quota would therefore be only [24] about 100 immigrants a year. There can be no reasonable apprehension that any such number of immigrants will cause unemployment or provide competition in the search for jobs.

"The extension of the privileges of citizenship to the relatively few Chinese residents in our country would operate as another meaningful display of friendship. It would be additional proof that we regard China not only as a partner in waging war, but that we shall regard her as a partner in days of peace. While it would give the Chinese a preferred

status over certain other oriental people, their great contribution to the cause of decency and freedom entitles them to such preference.

"I feel confident that the Congress is in full agreement with these measures—long overdue—should be taken to correct an injustice to our friends. Action by the Congress now will be an earnest of our purpose to apply the policy of the good neighbor to our relations with other peoples.

"The White House, October 11, 1943.

"FRANKLIN D. ROOSEVELT."

The Congress and the President of the United States certainly intended to reopen privileges of naturalization to all those Chinese who could meet the requirements of the law.

Is there any practical alternative which would allow petitioner to eventually become a citizen of the United States if it were decided that his entry was not one for permanent residence under the Nationality Act of 1940 as amended?

The Monthly Review of the Immigration and Naturalization Service, issue of December, 1947, Vol. V, No. 6, Article "A Century of Chinese Immigration", on page 73, in brief review recites as follows:

"Since Repeal of the Chinese Exclusion Laws * * * Removal of Chinese persons from the category 'aliens ineligible to citizenship' especially benefits those Chinese aliens already residing in the United States. Those lawfully here for permanent residence are eligible, in most cases, to proceed toward naturalization. Those unlawfully here are in a position to be

considered for the exercise of discretionary relief under Section 19(c) of the Act of February 5, 1917, or, if entry occurred before July 1, 1924, to apply for a certificate of lawful entry, and thus to change their status to that of persons admitted to the United States for permanent residence."

However, the petitioner, because he was admitted lawfully to the United States, is not subject to deportation, and therefore is not eligible to apply for discretionary relief [25] under Section 19(c) of the Act of February 5, 1917, as amended, 39 Stat. 889-890, 54 Stat. 671-673, 56 Stat. 1044, nor for the same reason, i.e., his being in the United States legally, can he be considered for relief under the recently enacted Public Law 863, which provides that a person who is a resident of the United States for seven years, and who entered the United States illegally, or is now in the United States in an illegal status, is eligible for discretionary relief.

Petitioner is further precluded from applying for a record of registry, see Section 728(b) of Nationality Act of 1940, as amended, because his entry to the United States was subsequent to July, 1924.

Conclusion

There have been two cases involving similar facts, wherein minor children of Chinese merchants under the Treaty with China of November 17, 1880, were admitted to citizenship; they are the cases of Wong Choon Hoi, D.C. Cal., 1947, 71-F Sup. 160, and petition of Chi Yan Cham Louie, No. 39067 (W.D. Wash., unreported decision of Judge Black, August 29, 1946).

In addition the case of Haff v. Yung Poy, involving this petitioner, wherein it has been decided that he was admitted to the United States for permanent residence.

It is submitted that the petitioner legally entered the United States for permanent residence, as a minor son of a Chinese merchant, pursuant to the Treaty of November 7, 1880, between the United States and China; that he has maintained legal and continuous residence in the United States since June 2nd, 1926; has a native-born spouse and two minor children, both born in the United States; has complied with all of the statutory requirements relating to naturalization, and is therefore eligible for naturalization on his present petition.

Respectfully submitted,

/s/ NORMAN STILLER,
Attorney for Petitioner.

[Endorsed]: Filed Dec. 31, 1948. [26]

In the United States District Court for the Northern District of California, Southern Division

In the Matter of the Petition of YUNG POY, also known as PAUL YOUNG, For Naturalization.

No. 245-P-88041

ORDER ADMITTING PETITIONER TO CITIZENSHIP

Upon the authority of Haff, Commissioner, v. Yung Poy, 9 Cir., 68 Fed. 2d 203, In re Chi Yan Cham Louie, 70 Fed. Supp. 493, (appeal dismissed,

9 Cir., 166 Fed. 2d 15), and Petition of Wong Choon Hoi, 71 Fed. Supp. 160, (appeal dismissed 9 Cir., 164 Fed. 2d 699), the petitioner may be admitted to citizenship upon taking the oath required by law.

Dated January 14, 1949.

LOUIS E. GOODMAN,
United States District Judge.

Filed Jan. 14, 1949. [27]

[Original]

Date January 24, 1949. List No. 2217. This list consists of one sheet. Sheet No. 1.

ORDER OF COURT

In the District Court of the United States.
United States of America,
Northern District of California—ss.

Upon consideration of the petitions for naturalization listed on List No. 2204; sheet No. 1: dated November 22nd, 1948, presented in open Court the 22nd day of November, A.D. 1948, It Is Hereby Ordered that:

Recommendation of Designated Officer is Disapproved as to the Petition of Yung Poy Listed Below, and said petitioner so listed having appeared in person, It Is Hereby Ordered that he be, and hereby is, admitted to become a citizen of the United States of America. Prayer for change of name listed below granted, all of which is in accordance with order filed January 14, 1949.

Petition No. 88041. Name of Petitioner: Young Poy. Change of Name: Paul Young.

* * * *

By the Court:

LOUIS E. GOODMAN,
Judge.

[Endorsed]: Filed Jan. 24, 1949. C. W. Calbreath, Clerk. [28]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that The United States of America, Appellant above-named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Order and Judgment of the United States District Court for the Northern District of California, Southern Division, made and entered January 24, 1949, in Petition No. 88041, granting the above-named petitioner and appellee Certificate of Citizenship No. 6933500, and admitting him to citizenship.

Dated March 21, 1949.

/s/ FRANK J. HENNESSY,
United States Attorney, Attorney for above-named Appellant.

[Endorsed]: Filed March 21, 1949. [29]

[Title of District Court and Cause.]

STIPULATION FOR TRANSMITTAL OF ORIGINAL DOCUMENTS

It Is Hereby Stipulated by and between counsel for appellant and counsel for appellee that the following documents mentioned in the designation of contents of record on appeal shall be transmitted with the appellate record in this case and may be considered by the Court of Appeals in lieu of the certified copies of said immigration files and records of the Department of Justice:

1. Certified copy of petition for naturalization, No. 88041;

2. Certified copy of certificate of arrival, No. 1300-K-15067, dated October 28, 1947; [30]

3. Motion for order of denial, signed by Francis P. Boland, designated examiner, filed November 22, 1948.

/s/ FRANK J. HENNESSY,
United States Attorney,

/s/ EDGAR R. BONSALL,
Assistant United States Attorney, Attorneys for Appellant.

/s/ NORMAN STILLER,
Attorney for Appellee.

(Acknowledgment of Service.)

[Endorsed]: Filed March 24, 1949. [31]

[Title of District Court and Cause.]

ORDER FOR TRANSMITTAL OF ORIGINAL DOCUMENTS

By stipulation of counsel, It Is By This Court Ordered, and the Court Does Hereby Order the Clerk of the above-entitled Court to transmit with the appellate record in said cause the originals of the following documents:

1. Certified copy of petition for naturalization, No. 88041;

2. Certified copy of certificate of arrival, No. 1300-K-15067, dated October 28, 1947; [32]

3. Motion for order of denial, signed by Francis P. Boland, designated examiner, filed November 22, 1948.

Done in open Court this 24th day of March, 1949.

/s/ LOUIS GOODMAN,
United States District Judge.

[Endorsed]: Filed March 24, 1949. [33]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

To the Clerk of the above-entitled Court:

The appellant, the United States of America, hereby designates the following to be contained in the record on appeal:

1. Certified copy of petition for naturalization, No. 88041;

2. Certified copy of certificate of arrival, No. 1300-K-15067, dated October 28, 1947;

3. Motion for order of denial of petition, dated November 22, 1948; [34]

4. Transcript of testimony in open Court of petitioner Yung Poy and witness Jennie Young on November 22, 1948;

5. Order of the District Court that petitioner may be admitted to citizenship, dated January 14, 1949;

6. Order of Court admitting petitioner to citizenship, dated January 24, 1949;

7. Statement of facts filed by designated Examiner Francis P. Boland, dated November 22, 1948;

8. Statement of facts filed by Norman Stiller, attorney for petitioner, dated December 31, 1948.

9. Notice of appeal;

10. Stipulation for transmittal of original documents;

11. Order for transmittal of original documents.

/s/ FRANK J. HENNESSY,
United States Attorney,

/s/ EDGAR R. BONSALL,
Assistant United States Attorney, Attorneys for Appellant.

(Acknowledgment of Service.)

[Endorsed]: Filed March 24, 1949. [35]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and accompanying document, listed below, are the originals filed in this court, or true and correct copies of documents filed in the above-entitled case, and that they constitute the record on appeal herein, as designated by the parties,

Copy of the Petition for Naturalization.

Copy of the Certificate of Arrival.

Copy of the Motion for Order for Denial of Petition.

Statement of Facts by F. P. Boland, Designated Naturalization Examiner.

Statement of Facts by Norman Stiller, Attorney for Petitioner.

Copy of Order Admitting Petitioner to Citizenship.

Copy of Order of Court Admitting Petitioner to Citizenship.

Notice of Appeal.

Stipulation for Transmittal of Original Documents.

Order for Transmittal of Original Documents.

Designation of Contents of Record on Appeal.

1 Volume of Reporter's Transcript for November 22, 1948. [36]

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 12th day of April, A.D. 1949.

(Seal) C. W. CALBREATH,
Clerk. [37]

In the Southern Division of the United States District Court, in and for the Northern District of California

Before Hon. Louis E. Goodman, Judge.

No. 88,041

In the Matter of the Contested Petition for the Naturalization of YUNG POY.

REPORTER'S TRANSCRIPT

November 22, 1948, 2:30 p.m.

Counsel Appearing: For the Petitioner Norman Stiller, Esq. For Department of Immigration and Naturalization Francis P. Boland, Esq. [1*]

The Clerk: Petition of Yung Poy. That is No. 20, your Honor. Is that your case, Mr. Stiller?

Mr. Stiller: Yes, your Honor. This is a case that is going to take considerable time. I have no objection to going on with it.

Mr. Boland: I don't know if the Court cares to hear the case in detail at this time, because it involves so many points of law. I believe that the Court would

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* Page numbering appearing at foot of page of original certified Reporter's Transcript.

require more detailed statement of the legislation involved, so I prepared a supplemental statement of facts.

The Court: Is this only a question of law and not a question of fact?

Mr. Boland: Yes, your Honor.

Mr. Stiller: Yes, your Honor, there is no character involved or anything except the question of law.

Mr. Boland: I would like to read into the record a statement of facts, because I think there will be an appeal regardless of which way the decision goes.

The Court: Very well.

Mr. Boland: (Reading.)

"The father of petitioner was lawfully admitted to the United States on February 6, 1917. as a merchant under Article II of the Treaty of 1880 with China and the proclamations and statutes enacted to carry it into effect. [2]

"The petitioner, who is of Chinese race and nationality, was born in China on March 24, 1917, and on July 3, 1926, was admitted to the United States at San Francisco, California, as the son of a merchant. Thereafter the father ceased to be a merchant and on September 9, 1932, the petitioner was ordered deported to China on the ground that he had remained in the United States after failing to maintain the exempt status, under which he was admitted, of an alien entitled to enter the United States solely to carry on trade under and in pursuance of the provisions of the present existing treaty of commerce and labor. A writ of habeas corpus was obtained in the District Court at San Francisco and upon the

hearing thereof, it was ordered that the petitioner be discharged from custody. An appeal was taken to the Circuit Court of Appeals, Ninth Circuit, and the order was affirmed. (Haff v. Yung Poy, 68 F. 2d 203.)

"On February 1, 1942, the petitioner married a native-born citizen of the United States and on February 17, 1948, filed the present petition for naturalization without a declaration of intention as the spouse of a citizen under the provisions of Section 311 of the Nationality Act of 1940.

"Filed with the petition is a certificate of arrival qualified to show the petitioner's admission to [3] the United States as the minor son of a merchant under Section 3(6) of the Immigration Act of 1924."

If counsel has any statement of facts which he would like to add to that?

Mr. Stiller: Yes, well, this is not too important, but I would like to have as part of the statement of facts that there are two children of the marriage of petitioner and his wife, native-born citizens of the United States; and in addition to that—and this is important—in the last paragraph, and this is one of these contentions, the statement is made, "filed with the petition is a certificate of arrival qualified to show the petitioner's admission to the United States as the minor son of a merchant under Section 3(6) of the Immigration Act of 1924."

My interpretation of the situation and of the facts is that he was admitted as a minor son of a merchant under the treaty that the United States had with China, the Treaty of 1880. And that has importance in view of the decisions of two district court federal

judges who ruled substantially with the same set of facts we have present here, in favor of the petitioners; and they call attention to that particular fact.

Mr. Boland: Well, then, counsel agrees with the statement of facts except that he contends the entry was under the treaty and not under Section 3(6) of the Act of 1924.

Mr. Stiller: I think that is substantially the statement [4] of fact, that that is correct.

The Court: Well, how about the new law? Does that affect this?

Mr. Stiller: No.

Mr. Boland: Do you mean Section 19(c), which provides——

The Court: I mean with respect to those who have married American citizen spouses, that the original illegal presence in the United States would be forgotten as a defect; does that involve that rule?

Mr. Stiller: Well, if your Honor please—and counsel for the Government will concede this—there is no claim on the part of the Government that this entry is illegal. The only question involved is as to whether it is the type of permanent entry which is good for naturalization purposes. But in a previous case, involving the party, the Circuit Court of Appeals of the United States in this district in effect stated that the petitioner was here for permanent residence and could remain indefinitely. There are other people in the same category as the petitioner.

Now with regard to this law that you have mentioned that has to do with people who are here illegally, who have come in as visitors and over ex-

tended leave, or come in as stowaways or were smuggled in in some capacity; that is not true of the petitioner in this case. There is a record of his arrival in the United States and the Service is in possession of [5] all the facts concerning his arrival.

The Court: Well, the petition is resisted, I take it, by the Naturalization Department because they claim that at a certain point he was no longer, and could no longer lawfully remain, in the United States. Is that the point?

Mr. Stiller: No, that isn't——

Mr. Boland: Well, we got a little bit away from the plan I had of presenting the case. I had intended just to have counsel take exception to my statement of facts if he so desired.

Mr. Stiller: Well, I would like to answer the Judge's questions.

The Court: Well, I understand that. I am just trying to find out what the question is.

Mr. Boland: Well, the question is simply, is he lawfully admitted to the United States for permanent residence within the meaning of the Nationality Act, Section 311 of the Nationality Act, under which his petition is filed. That section requires a lawful entry for permanent residents.

Now it is the contention of the Government that he entered under Section 3(6) of the Immigration Act of 1924, which section provides for the entry into the United States of treaty traders, of merchants, who enter under a treaty. Now a person who enters under the treaty must maintain status, or at least, the very least, his status is not that of an immigrant for [6] permanent residence. It is an entry for a

limited purpose only. This petitioner, entering for a limited purpose, does not come within the meaning of the Nationality Act.

The Court: Oh, I see.

Mr. Boland: Which requires lawful and unlimited entry for any purpose whatsoever.

The Court: You mean that a man who comes in as a merchant is not entitled to the benefit?

Mr. Boland: Yes, the same as an ambassador.

Mr. Stiller: I would like to correct certain statements that were made there that are not entirely correct.

The Court: Well, I am not desirous of getting into an argument as to the facts; all I am trying to find out is what the question is from your point of view, the issue in this case; what you are contending for is that a man who comes in, as did the plaintiff in this case, as a merchant or as the son of a merchant, I think you said, didn't you?

Mr. Boland: The son of a merchant.

The Court: Yes. That he does not acquire by that status a status which entitles him to become an American citizen; is that right?

Mr. Stiller: Well, with this exception, your Honor, even in that limited statement: The situation would depend whether they come in before July 1, 1924, or after that date. I mean, to show the ridiculous position the Government has put [7] itself into, that is what they have ruled, that all treaty merchants, Chinese treaty merchants and their sons, who came in before July 1, 1924, had that type of entry which entitles them to become citizens. Those that entered after that date have not. I think the Government

will concede that. And in fact, that was drawn upon as——

The Court: Well, I see what the issue is. I guess you had better submit briefs in that matter. Is that what you have in mind?

Mr. Boland: Yes, your Honor, I have prepared a more detailed statement of facts, and the statement of law; and also, for the convenience of the Court, there were two other similar cases decided, one in, I think it was in Portland, and one in Los Angeles—both were decided adversely to the Government. Appeals were taken to the Ninth Circuit Court and they were dismissed because they were not taken by the proper party. So if the Court is interested, I could leave the briefs here.

The Court: All right. Now do you want to have this considered as the opening brief, Mr. Boland?

Mr. Boland: Yes, your Honor.

The Court: How much time do you want to answer, counsel?

Mr. Stiller: Twenty days, your Honor.

The Court: Twenty days? And then do you wish to reply, file a final memorandum?

Mr. Boland: I would like to have the right to reply, [8] but I don't know that I will necessarily at that time.

The Court: All right, twenty days to the petitioner and twenty days to reply on the part of the Government.

Mr. Stiller: If your Honor please, the petitioner and his wife are both in the court. It may be that your Honor will desire to examine them. I don't know to what extent equitable considerations will

enter into this, or any considerations other than the point of law involved; but the judges in the other two cases, which are similar, did examine the petitioners.

The Court: Well, if you think that it would be helpful, have them come up and you may bring out whatever you wish.

Mr. Stiller: All right.

Mr. Boland: We have no objection to the petitioner on any other ground, than the grounds stated —the technical ground that there was not filed with the petition a valid certificate of arrival showing the date, place, and manner of the petitioner's arrival and whether the petitioner has or has not established continuous legal residence within the United States, as required by law. That is what it boils down to; that means simply that he does not have a lawful entry for permanent residence. That is the sole issue that we care to raise.

The Court: Well, have them both come up and you can ask them such questions as you want.

Mr. Stiller: The record will show that he has been sworn in, and that might be of some—— [9]

PAUL YUENG,

called in his own behalf; sworn.

Q. (By the Clerk): Will you state your name to the Court?

A. Paul Yueng, Y-u-e-n-g.

Direct Examination

Q. (By Mr. Stiller): Mr. Yueng, you came to the United States in 1926, is that correct?

A. That is right.

Q. And you have lived in the United States since that time? A. Yes, sir.

Q. And you were born in 1917, is that right?

A. That's right.

Q. Then you came in as a boy of nine years of age, is that correct? A. That's right.

Q. And you have received your schooling here in the United States, is that correct?

A. That's right.

Q. Are you married? A. Yes.

Q. Is your wife a citizen of the United States?

A. Yes.

Q. Native-born citizen? A. Yes.

Q. Do you have any children? [10]

A. Yes.

Q. How many children? A. Two.

Q. Are they native-born citizens of the United States? A. Yes.

Q. Have you ever been back to China for any extended visit or trips? A. No.

Q. Are your sympathies and loyalties with the United States? A. Yes.

Mr. Stiller: If your Honor please, this petitioner has passed a satisfactory examination in government; all I am trying to bring out by these questions is that he is thoroughly American in every sense of the word.

The Court: Q. Where did you go to school?

A. I went to school in San Jose.

Q. In San Jose? A. Yes.

Q. What school?

A. When I started, Grant School.

Q. You went to Grant School; that is a grammar school?

A. Yes, and then I come up here and went to Francisco Junior High.

Q. In San Francisco?

A. Yes. And then I went to North Point Diesel, to study Diesel [11] Engineering.

Q. And how old are you now?

A. Thirty-one.

Q. Thirty-one. Now during the war, the last war, what did you do?

A. I was working at the Atlas Imperial Diesel Engine Company.

Q. What did you do there?

A. I was doing replacement for the shop works. I went there to operate the lathe, but I didn't show up at that job, I run—most of the time all I did is the drill press layout.

Q. And what was your status under the draft law, what were you classified as? A. 1-A.

Q. And did they reject you for military duty?

A. No, I had two weeks to go before I would go into the Armed Forces, and I was all ready to go in, but the company appealed in Washington, see, and they appealed in, they sent a man over to my draft board. They deferred me.

Q. They deferred you because of your occupation? A. Yes.

Q. Did you buy any bonds during the war?

A. Yes.

Q. How much did you buy?

A. Every week I got one bond.

Q. Every week. And how many did you get altogether? [12] A. Oh, I think about——

Q. How many did you accumulate?

A. I think about 40 or 50 bonds.

The Court: That is all. Is the wife here?

Mr. Boland: Do you want the wife's testimony?

Mr. Stiller: She may take the stand, your Honor.

The Court: All right, that is all.

(Witness excused.)

JEANNIE YEUNG,

called on behalf of the petitioner; sworn.

Q. (By the Clerk): Will you state your name to the Court, please? A. Jeannie Yueng.

Direct Examination

Q. (By Mr. Stiller): Mrs. Yueng, you are married to the petitioner, whose real name, Yung Poy—he wishes his name changed to Paul Young, is that correct? A. Yes.

Q. And how long have you been married to him?

A. Six years.

Q. And you are a native-born citizen of the United States, is that correct? A. Yes.

Q. You have two children by the petitioner? [13]

A. Yes.

Q. Now, if your husband were denied American citizenship for some technical reason, would that work a hardship if he were ordered deported back to China? A. Yes, it would.

Q. Would you have means of support for your family and yourself?

A. Well, it makes it kind of hard. I don't think—

Mr. Boland: That is not involved, because if it is a hardship case, there are provisions against, as you know, deportation.

Mr. Stiller: Well, I just wanted to bring out the facts, your Honor, that she is entirely dependent upon him for support.

The Court: Q. Where were you born, Mrs. Yeung? A. Alviso, California.

Q. And where did you go to school?

A. Well, I went to grammar school there, and then when we moved up here, went to Francisco.

Q. Did you go to Francisco, too?

A. Yes.

Q. How old are you now?

A. Twenty-nine.

Q. Are you employed, too, do you work too?

A. Well, right now, yes.

Q. And what is your employment?

A. Sales girl, sales clerk. [14]

Q. Sales clerk. I see. Here in San Francisco?

A. Yes.

The Court: Anything else you want to present?

Mr. Stiller: Not from the witness. I just wanted to point out, your Honor——

The Court: That is all.

(Witness excused.)

Mr. Stiller: ——that due to the technicalities present in this case, it is very difficult for the petitioner to legalize his entry in such a manner that he would be eligible for citizenship.

The Court: You can point that out in the brief. You can point out anything you wish in the brief. I will mark it submitted, 20 and 10, then.

CERTIFICATE OF REPORTER

I, Eldon N. Rich, Official Reporter, pro tem, certify that the foregoing 15 pages is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting, to the best of my ability.

[Endorsed]: Filed Apr. 7, 1949.

[Endorsed]: No. 12225. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Yung Poy, also known as Paul Young, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed April 13, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
For the Ninth Circuit

No. 12225

THE UNITED STATES OF AMERICA,
Appellant,

vs.

YUNG POY, also known as PAUL YOUNG; In the Matter of the Petition of YOUNG POY, also known as PAUL YOUNG, to be admitted a citizen of the United States of America,
Appellee.

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY IN THE APPEAL IN THE ABOVE-ENTITLED MATTER

Comes now the United States of America, by and through Frank J. Hennessy, United States Attorney, and Edgar R. Bonsall, Assistant United States Attorney for the Northern District of California, and files herein the Statement of Points on which Appellant intends to rely in the appeal in the above-entitled matter:

I.

The District Court erred in holding and deciding that the appellee was admitted to the United States for permanent residence under the Treaty of Commerce and Navigation with China in 1888 (22 Stat. 826) for naturalization purposes.

II.

The District Court erred in holding and deciding that appellee's admission to the United States constituted lawful permanent residence for naturalization purposes.

III.

The District Court erred in failing to hold and decide that appellee was admitted to the United States temporarily as a non-immigrant alien under Section 3(6) of the Act of May 26, 1924, Title 8 U.S.C.A. 203.

IV.

The District Court erred in admitting appellee to citizenship.

Dated this 29th day of March, 1949.

/s/ FRANK J. HENNESSY,
United States Attorney,

/s/ EDGAR R. BONSALL,
Assistant United States Attorney, Attorneys for Appellant.

(Acknowledgment of Service.)

[Endorsed]: Filed April 13, 1949. Paul P. O'Brien, Clerk.